

ISIDORO ALVANO, PLAINTIFF AND APPELLANT, VS. LEOCADIO BATOON, MAURICIO BATOON, DANIEL GUILLERMO, LEONCIO BARENG, AND JUAN ALVANO, DEFENDANTS AND APPELLEES.*G.R. No. 7728. September 01, 1913*

Ponente: JOHNSON, J.

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On the 14th day of January, 1911, the plaintiff commenced the present action in the Court of First Instance of the Province of Ilocos Norte, for the purpose of recovering from the defendants the possession, as owner, of five parcels of land situated in the sitio of Cabalayangan, in the municipality of Dingras, of the Province of Ilocos Norte, more particularly described by metes and bounds in the second paragraph of the complaint

After hearing the evidence, the Honorable Dionisio Chanco, judge, reached the conclusion that the plaintiff was not entitled to recover said parcels of land. From that decision the plaintiff appealed.

In the answer the defendants tried to make it appear that the parcels of land which they were occupying were different parcels of land from those which the plaintiff was trying to recover. An examination of the proof adduced during the trial of the cause, however, shows not only by the declaration of the plaintiff himself, but by the declarations of two of the defendants, that the land which the plaintiff was attempting to recover was exactly the same land which the defendants were occupying. (See the testimony of Isidoro Alvano, Juan Alvano, and Leocadio Batoon.) There seems, then, to be no difficulty concerning the identity of the lands in question. The plaintiff contends that he purchased said five parcels of land from the co-owners, Eusebio Alvano, Juan Alvano, and Apolonia Alvano, and in support of that contention the plaintiff presented Exhibits A, B, and C. The plaintiff is the brother-in-law of the said Eusebio Alvano, Juan Alvano, and Apolonia Alvano. While the defendants, in their answer, allege that they had purchased the lands in question from Juan Alvano, no such contention is made in the proof. Not a word of proof was presented by the defendants in support of that contention. Leocadio Batoon, one of the defendants, testified as a witness during the trial of the cause, as a witness for the plaintiff, and said that Juan Alvano had mortgage the lands in question to the defendants. No documentary proof, however, was adduced in support of that fact. The record fails to show, if a mortgage existed, why it was not presented as proof during the trial of the cause. It appears then that the only claim which the defendants make to their right to the possession of the lands in question is the fact that they held a mortgage upon the same from Juan Alvano. A simple mortgage does not give the mortgage a right to the possession of the property unless the mortgage should contain some special provision to that effect. No claim is made by the defendants that the conditions of the mortgage gave them a right to the possession of the property. And, moreover, it was proven during the course of the trial that Juan Alvano was the owner of only one-fourth of the property in question and could not, therefore, execute a valid mortgage upon all of said property. Even though there was a condition, which was not proven, in the mortgagee which gave the defendants a right to the possession of the property in question, they would only be entitled to the possession of one-fourth of the same. Under no circumstances then would they be entitled to the possession of all of said property. Inasmuch as a mortgage does not generally give the mortgagee a right to the possession of the

property, and inasmuch as the defendants failed to show that the mortgage in question gave them a right to the possession of the property, we must conclude that the defendants have failed to show that they are entitled to the possession of the property. Their only claim to the possession of the property was based upon said mortgage. The plaintiff having shown that he had purchased the property from the former owners, which fact is not disputed in the record, we are forced to the conclusion that the judgment of the lower court should be reversed, and that the prayer of the petition of the plaintiff should be granted. And, without any finding as to costs, it is so ordered.

Arellano, C. J., Carson, Moreland, and Trent, JJ., concur.

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